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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Charles A. Price et al.

Serial No. 09/785,008

Filed: February 16, 2001

For: A SYSTEM AND METHOD FOR REMOTELY CONFIGURING TESTING  
LABORATORIES

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Art Unit: 2182

Examiner: Unassigned

RECEIVED

MAR 18 2004

Technology Center 2100

**RENEWED PETITION TO MAKE SPECIAL UNDER M.P.E.P § 708.02**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby file a renewed petition to make this application special under the special examining procedure for accelerated examination recited in M.P.E.P. § 708.02. The applicants original petition was dismissed because it was found to be deficient in two respects. First, the original petition did not explicitly state that applicants will make an election without traverse in the event that the application is found to be directed to more than one invention. The applicants now affirm that they will make an election without traverse if it is determined that restriction is required.

Second, the original petition was found deficient because the discussion of prior art references identified was found to lack the particularity required by 37 C.F.R. 1.111(b) and (c). In particular, the Decision on Petition identifies the language “appears to disclose” and “does not appear to disclose” as falling short of the particularity requirement. The Examiner also objects to the use of the term “test scenario” (original emphasis preserved) in discussing the claims of the

above identified application because “test scenario” does not appear in the claims, but rather “scenario” does.

In response, applicants have endeavored to point out with particularity, in the section below, the differences between the references identified and the patent claims and be responsive to the objections of the Examiner. The differences are discussed with particular reference to the limitation “scenario” (not “test scenario”) in the claims, which is a limitation found all of the independent claims presented for examination.

### **DISCUSSION OF THE REFERENCES**

The present application discloses and claims a system and method for creating a network topology description for a scenario that is used to test network elements. Once created, the scenario is scheduled and executed in one or more lab facilities to test the network, which is described and configured according to the scenario. This allows one to remotely measure the performance of a network in many different scenarios. None of the references described below includes these features.

U.S. Patent No. 5,671,414 to Nicolet discloses a system and method for loading, unloading or configuring remote server applications using a network-based client computer. In particular, Nicolet discloses the use of remote procedure calls to allow client software to directly interact with the operating system of a remote server. This allows developers to develop client software that has the ability to load, unload or otherwise configure their remote server software applications using a network client and server operating system. By contrast, the present invention is directed to creating “a network topology description for a scenario.” The quoted limitation is found in all of the independent claims. All of the claims also provide that the

scenario is scheduled and executed. Nicolet does not teach or suggest creating a network topology description for a scenario, scheduling the scenario or executing the scenario as claimed and therefore does not anticipate or render obvious the claimed invention.

U.S. Patent No. 5,796,953 to Zey discloses a method for establishing an Internet data link to remote test systems. According to the method, an Internet connection processor translates a remote site selection, such as the Chicago, Illinois site, into the Internet address of a remote system at that location and establishes an internet connection with the remote site. The Zey patent further teaches sending control commands to remote test systems. The Zey patent does not teach or suggest, however, creating a network topology description for a scenario, scheduling the scenario or executing the scenario as claimed and therefore does not anticipate or render obvious the claimed invention.

U.S. Patent No. 5,969,835 to Kamieniecki et al. discloses an infrared device that is used to automatically set-up, configure, initialize or test an electronic product, such as a television. The product is controlled by an infrared device. Kamieniecki discloses that the infrared device simulates key press sequences, key press duration and time between key presses to test the product. Kamieniecki does not teach or suggest creating a network topology description for a scenario, scheduling the scenario or executing the scenario as claimed and therefore does not anticipate or render obvious the claimed invention.

U.S. Patent No. 5,577,198 to Willrett et al. discloses a test methodology for testing newly developed networking products, such as routers. The test methodology includes connecting a test set to a first device, where the simulator simulates a second device. The Willrett methodology is based on unscheduled testing of a device that is connected directly to the test set. Willrett does not teach or suggest creating a network topology description for a scenario,

scheduling the scenario or executing the scenario as claimed and therefore does not anticipate or render obvious the claimed invention.

U.S. Patent No. 5,933,816 to Zeanah et al. is directed to delivering financial services over a network to a plurality of remote devices, such as personal computers, personal data assistants, screen phones and automated teller machines. Zeanna discloses a test interface used to test components of a device. However, Zeanah does not teach or suggest creating a network topology description for a scenario, scheduling the scenario and executing the scenario and therefore does not anticipate or render obvious the claimed invention.

European patent application number EP 910194 A2 to Lynch discloses a network test system that performs performance testing on networks to determine the performance of network devices. The Lynch reference focuses on establishing time references from which to calculate network delays and performance. In particular, Lynch discloses that there is no current method of determining one-way delay on the Internet, since no method is available to synchronize remote nodes to an accurate international time. Lynch does not teach or suggest, however, creating a network topology description for a scenario, scheduling the scenario and executing the scenario and therefore does not anticipate or render obvious the claimed invention.


### **CONCLUSION**

In view of the foregoing, applicants respectfully submit that the requirements of M.P.E.P § 708.02 have been met. In addition, the applicants submit that the pending claims are all allowable over the references described above when considered either individually or in combination. Accordingly, applicants request that this Petition to Make Special be granted and that the application proceed for expedited prosecution on the merits.

In the event that additional fees are required in connection with the filing of this Petition,  
please charge the fees to Deposit Account No. 19-5127, Order No. 19685.0007.

Respectfully submitted,

Dated: March 17, 2004

  
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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Application Number 09/785,008

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First Named Inventor Charles a. Price

Art Unit 2182

Examiner Name

Technology Center 2100

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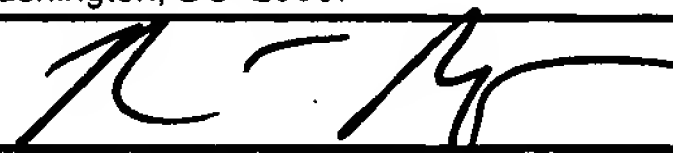
19685.0007

**ENCLOSURES (check all that apply)**☐ Fee Transmittal Form☐ Fee Attached☐ Amendment / Reply☐ After Final☐ Affidavits/declaration(s)☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Document(s)☐ Response to Missing Parts/  
Incomplete Application☐ Response to Missing  
Parts under 37 CFR  
1.52 or 1.53☐ Drawing(s)☐ Licensing-related Papers☒ Petition☐ Petition to Convert to a  
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(please identify below):**Renewed Petition to Make  
Special Under M.P.E.P. § 708.02**

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**Firm  
or  
Individual nameRobert C. Bertin, Reg. No. 41,488  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, Suite 300  
Washington, DC 20007

Signature



Date

March 17, 2004

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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